

# **MODIFICATIONS TO THE PUBLIC DRAFT AND RESPONSE TO COMMENTS**

*for the*

**YUBA COUNTY WATER AGENCY  
PROPOSED EXTENSION PETITION FOR THE INTERIM INSTREAM  
FLOW REQUIREMENTS UNDER  
STATE WATER RESOURCES CONTROL BOARD  
REVISED WATER RIGHT DECISION 1644**

*Prepared for*



*Prepared by*



*November 2006*

**(STATE CLEARINGHOUSE NUMBER: 2006102026)**

## MODIFICATIONS TO THE PUBLIC DRAFT 2007 PILOT PROGRAM INITIAL STUDY/MITIGATED NEGATIVE DECLARATION

The purpose of public review of the 2007 Pilot Program Initial Study/Mitigated Negative Declaration (IS/MND) was to receive comments from interested parties on its completeness and adequacy in disclosing potential environmental impacts of the proposed project. The information regarding revisions to the Draft IS/MND contained within this document comprises one component of the materials that comprise the Final IS/MND, which has been prepared following the close of the Draft IS/MND public review period on November 6, 2006. The Final IS/MND contains, among other items, the comments received on the Draft IS/MND and responses to those comments, and clarifications or further explanations of information provided in the Draft IS/MND. Yuba County Water Agency (YCWA), as the lead agency for California Environmental Quality Act (CEQA) compliance purposes, is responsible for approving the IS. After making this approval, YCWA will use the IS in making its decision on whether to approve the proposed project.

The changes to the Draft IS/MND presented below are intended to provide additional clarification regarding proposed project elements and/or analyses, incorporate additional detail regarding proposed project features or mitigation measures and make minor corrections. The changes to the document do not alter the impact conclusions that were presented in the Draft IS/MND.

### MODIFICATIONS TO THE DRAFT IS/MND

1. On page 1-4, in section 1.3.3.2, "FERC License Agreements" is changed to "FERC License and Amendments."
2. On page A1-1, mitigation measures for the five resources listed on page 1-7 in "Less-than-Significant Impacts with Mitigation Incorporated" are derived from the Environmental Water Account (EWA) Program EIS/EIR. However, the "Less Than Significant With Mitigation Incorporated" boxes in the environmental checklist are not checked for these resources. The mitigation measures from the Short Term EWA EIS/EIR will be incorporated into the mitigation monitoring and reporting plan for the 2007 Pilot Program.
3. On page 4-26, steelhead juvenile rearing is described as occurring year round. Young-of-the-year steelhead downstream movement generally occurs May through September, and is treated as a subset of juvenile rearing. Both lifestages are included in the summary of evaluation considerations and conclusions to be inclusive and to disclose and discuss any potential impacts to the species.
4. On page 4-36, the second sentence states: "The evaluation of potential impacts upon Delta fisheries resources considers whether DWR's acquisition of the YCWA transfer water would result in changes in SWP operations that could result in the following:
  - ❑ Conflict with existing regulatory compliance requirements related to Delta export pumping
  - ❑ Increased pumping at the Delta pumping facilities above levels authorized in existing permits."

After these statements, the following clarifying sentence is added: “The analysis of potential impacts to Delta aquatic resources presented in this IS relies on the environmental analyses presented in the Short Term EWA EIS/EIR.”

5. The references on pages 4-40 and subsequent pages to Figure A4-1 and other “A4” figures all are changed to refer to “A3” figures because Appendix A3 contains the flow exceedance plots. Similarly, all the references to “A5” figures are changed to “A4” because Appendix A4 displays the water temperature exceedance plots.
6. On pages 4-51 and 4-52, references to the NMFS 2005 Biological Opinion are changed to reference the 2005 FERC Order Modifying and Approving Amendment of License for the Yuba River Development Project (FERC No. 2246). Therefore, the section “*Potential Redd Dewatering and Juvenile Stranding*” is modified as follows:

Revised flow reduction and fluctuation criteria for the lower Yuba River were established in the 2005 FERC Order Modifying and Approving Amendment of License for the Yuba River Development Project (FERC No. 2246). The revised flow reduction and fluctuation criteria were developed to be more protective than previous requirements of juvenile salmonids from stranding and of salmonid redds from dewatering. The following conditions stipulated in the FERC Order were developed to protect salmonid redds from dewatering (FERC 2005):

- ❑ Once the daily project release or bypass level is achieved, fluctuations in the streamflow level downstream of Englebright Dam due to changes in project operations shall not vary up or down by more than 15 percent of the average daily flow.
- ❑ During the period from September 15 to October 31, YCWA shall not reduce the flow downstream of Englebright Dam to less than 55 percent of the maximum five-day average release or bypass level that has occurred during that September 15 to October 31 period or the minimum streamflow requirement that would otherwise apply, whichever is greater.
- ❑ During the period from November 1 to March 31, YCWA shall not reduce the flow downstream of Englebright Dam to less than the minimum streamflow release or bypass established under (4) above; or 65 percent of the maximum five-day average flow release or bypass that has occurred during that November 1 to March 31 period; or the minimum streamflow requirement that would otherwise apply, whichever is greater.

Additional detail is provided in the 2005 FERC Order (FERC 2005).

Substantial decreases in instream flows at the conclusion or “ramp-down” phase of water transfers are of concern because of the potential that fish stranding could result when flows in the river decrease. As juvenile salmonids grow, they move from the shallower back water/side channel habitats to faster water associated with the main channel. However, stranding or isolation of juvenile salmonids can occur in side pools or channels with an increasing gradient towards the main channel if these areas become isolated from the main river channel due to flow reductions. It is recognized that there are side channels along the lower Yuba River that could become isolated from the main river channel if flow reductions at the end of the transfer period are not managed carefully. In addition to complying with the flow reductions and fluctuation criteria in the 2005 FERC Order, during the proposed project YCWA would implement a maximum

ramp-down rate of 200 cfs per day, in four increments of about 50 cfs each, as was done for the 2004 water transfer (YCWA 2004). These proposed rates are more restrictive than the ramp-down rates in the current SWRCB RD-1644 interim regulatory baseline and the 2005 FERC Order.

YCWA also is obligated to complete a fry stranding and redd dewatering study that was developed collaboratively with NMFS, USFWS, and CDFG. The NMFS 2005 BO states that the results of this study will be used as the basis for developing a flow reduction and fluctuation management plan (FRFMP) for the lower Yuba River. This FRFMP is expected to be designed and implemented in a way that will further minimize potential take of listed species resulting from flow reductions and fluctuations downstream of Englebright Dam.

7. On page 5-2, in the sentence at the end of section 5.1.1.2, "request the SWRCB" is changed to "request to the SWRCB."
8. On page 5-3, the first sentence in the last paragraph is deleted.
9. On page 1-2 of Appendix 2, "request the SWRCB" is changed to "request to the SWRCB."
10. On pages 4-61 and 4-62 of Appendix 2, references to the NMFS 2005 Biological Opinion are changed to reference the 2005 FERC Order Modifying and Approving Amendment of License for the Yuba River Development Project (FERC No. 2246).
11. On page 4-88, of Appendix 2, the last paragraph is deleted.
12. On page 5-4 of Appendix 2, the first sentence in the second paragraph is deleted
13. On page B-41 of Appendix 3, Figure B-14 is replaced with the following figure:

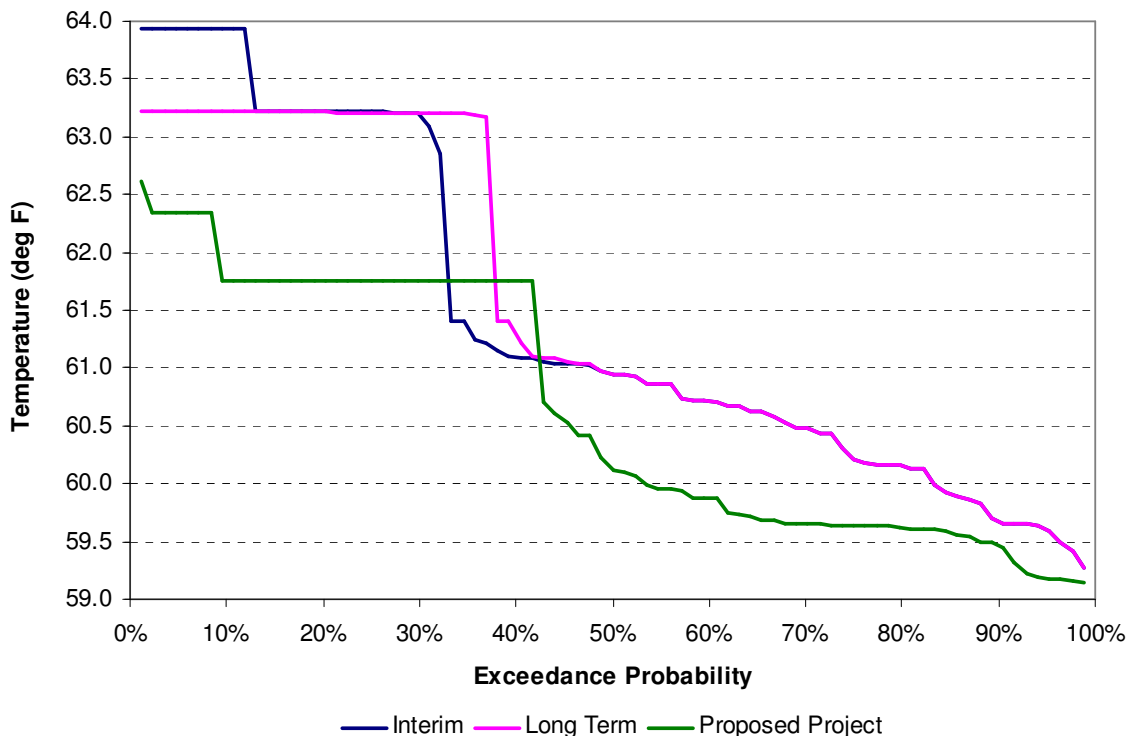


Figure B-14. Exceedance Probability of Yuba River Water Temperature at Marysville for September 2007



## RESPONSE TO COMMENTS ON THE PUBLIC DRAFT 2007 PILOT PROGRAM INITIAL STUDY/MITIGATED NEGATIVE DECLARATION

### DOCUMENT REVIEW AND AVAILABILITY

The public comment period extended from October 6, 2006 through November 6, 2006. The Draft Initial Study/Proposed Mitigated Negative Declaration was available for public review at the following locations:

- ❑ Yuba County Library, 303 2nd St., Marysville, CA 95901
- ❑ Yuba County Water Agency, 1402 D Street Marysville, CA 95901
- ❑ Sacramento Public Library, 828 I Street, Sacramento, CA 95814

In addition, the Draft Initial Study/Proposed Mitigated Negative Declaration was distributed to parties listed in **Attachment 1**.

The Notice of Intent to Adopt the Initial Study/Proposed Mitigated Negative Declaration dated October 6, 2006 stated that questions could be directed to:

Curt Aikens  
Yuba County Water Agency  
1402 D Street  
Marysville, CA 95901 (530/741-6278)

The Notice of Intent to Adopt the Initial Study/Proposed Mitigated Negative Declaration dated October 6, 2006 stated that comments could be directed to:

Debra Hoek  
Surface Water Resources, Inc.  
2031 Howe Avenue, Suite 110  
Sacramento, CA 95825 (916/563-6360)

### COMMENTS RECEIVED

A total of two comment letters were received on the Initial Study/Proposed Mitigated Negative Declaration. The California Department of Water Resources Floodway Protection Section submitted comments on October 11, 2006 via U.S. mail. The Planning and Conservation League submitted comments on November 1, 2006 via U.S. mail. The comment letters are included as **Attachment 2** and the responses to comments are included as **Attachment 3**.

## Attachment 1

Last Name	First Name	Company
Aanestad	Sam	California State Senate Nevada City District Office
Aceituno	Michael	National Marine Fisheries Service (NOAA Fisheries)
Aikens	Curt	Yuba County Water Agency
Aldridge	Robert	California Department of Water Resources
Baer	Isabel	State Water Resources Control Board
Bartkiewicz	Paul	Bartkiewicz, Kronick & Shanahan
Beecham	Patricia	Yuba County Office of Emergency Services
Belza	John	South Yuba Water District
Belza	Tib	Yuba County Water Agency, Board of Directors
Birmingham	Thomas	Westlands Water District
Boardman	Tom	San Luis & Delta-Mendota Water Authority
Bobker	Gary	The Bay Institute of San Francisco
Bonham	Chuck	Trout Unlimited
Broddrick	L. Ryan	California Department of Fish and Game
Brown	Delores	California Department of Water Resources
Brown	Syd	California Department of Parks
Burns	Don	Sacramento Public Library
Cantu	Celeste	State Water Resources Control Board
Casey	Steve	Marysville Planning Department
Cohan	Janet	South Yuba River Citizens League
Cotter	Walter	Browns Valley Irrigation District
Crothers	Cathy	California Department of Water Resources
Davis	John	Bureau of Reclamation
Davis	Matt	U.S. Army Corps of Engineers
Donaldson	Milford	Office of Historic Preservation
Doolittle	John	U.S. House of Representatives
Draper	Andy	MWH
Dvorak	Allison	State Water Contractors
Eckart	Bob	Bureau of Reclamation
Farwell	Jane	State Water Resources Control Board
Frink	Dan	State Water Resources Control Board
Fullerton	Dave	Metropolitan Water District
Geimer	Teresa	California Department of Water Resources

Last Name	First Name	Company
Golb	Richard	PacificComm LLC
Goude	Cay	U.S. Fish and Wildlife Service
Griego	Mary Jane	Yuba County Water Agency, Board of Directors
Grinnell	Steve	MWH
Guy	David	Northern California Water Association
Harlow	David	U.S. Fish and Wildlife Service
Heaton	Mike	Bureau of Reclamation
Hendrix	Robert	Department of Environmental Review and Assessment
Hensley	Page	Yuba County Water Agency
Herger	Wally	House of Representatives
Hobbs	Jennifer	U.S. Fish and Wildlife Service
Huckins	Don	Hallwood Irrigation Company
Jackson	Michael	California Sport Fishing Association
Johns	Jerry	California Department of Water Resources
Johnson	Tom	
Kapahi	Gita	State Water Resources Control Board
Keene	Richard	California State Assembly Chico District Office
Kimura	Linda	Sacramento Metropolitan Air Quality Management District
Lauffer	Michael	State Water Resources Control Board
Leggett	Robert	Nevada County Planning Department
Lilly	Alan	Bartkiewicz, Kronick & Shanahan
Mallen	Kevin	Yuba County Water Agency
Manning	James	Yuba County Community Development Department
Mathews	Charles	Cordua Irrigation District
McCrory	Loren	Yuba County Library
Mensch	Jerry	California Sport Fishing Association
Miller	Eric	Yuba County Water Agency
Moeller	Lewis	State Water Resources Control Board
Mona	Ernie	State Water Resources Control Board
Murray	Nancee	California Department of Fish and Game
Nelson	Earl	Western Area Power Administration
Nelson	John	California Department of Fish and Game
Odenweller	Dan	California Sport Fishing Association
Onken	Steve	Yuba County Water Agency
Parker	Dennis	Yuba County Water District

Last Name	First Name	Company
Quinn	Tim	Metropolitan Water District
Ramos	Sue	Bureau of Reclamation
Reeves	Christopher	Bureau of Indian Affairs
Robles	John	Bureau of Reclamation
Rubin	Jon	Diepenbrock Harrison
Rue	Michael	South Yuba Water District
Rust	Tim	Bureau of Reclamation
Schrader	Don	Brophy Water District
Schrader	Don	Yuba County Water Agency, Board of Directors
Snow	Jim	Kronick, Moskovitz, Tiedeman
Snow	Lester	California Department of Water Resources
Spencer	Curtis	California Department of Water Resources
Stallins	Ron	Ramirez Water District
Stocker	Hal	Yuba County Water Agency, Board of Directors
Stork	Ronald	Friends of the River
Taylor	Willie	Office of Environmental Policy and Compliance
Tucker	Mike	National Marine Fisheries Service
Upton	Jeanene	Yuba County Water Agency
Valler	David	Feather River Air Quality Management District
Vander Sluis	Matt	Planning and Conservation League
Waltz	Marilyn	Wheatland Water District
White	Jim	California Department of Fish and Game
Whitney	Victoria	State Water Resources Control Board
Wilson	Greg	State Water Resources Control Board
Zepp	Alan	Northern California Power Agency
		Central Valley Regional Water Quality Control Board
		Dry Creek Mutual Water Company
		Pacific Gas & Electric Company

## Attachment 2

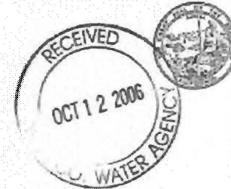
STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

**DEPARTMENT OF WATER RESOURCES**

1416 NINTH STREET, P.O. BOX 942836  
SACRAMENTO, CA 942360001  
(916) 653-5791

CSA - COPY



October 11, 2006

Curt Aikens  
Yuba County Water Agency  
1401 D Street  
Marysville, California 95901

Proposed Extension Petition for the Interim Instream Flow Requirements Under State  
Water Resources Control Board Revised Water Right Decision 1644  
State Clearinghouse (SCH) Number: 2006102026

The project corresponding to the subject SCH identification number has come to our attention. The limited project description suggests your project may be an encroachment on the State Adopted Plan of Flood Control. You may refer to the California Code of Regulations, Title 23 and Designated Floodway maps at <http://recbd.ca.gov/>. Please be advised that your county office also has copies of the Board's designated floodways for your review. If indeed your project encroaches on an adopted food control plan, you will need to obtain an encroachment permit from the Reclamation Board prior to initiating any activities. The attached Fact Sheet explains the permitting process. Please note that the permitting process may take as much as 45 to 60 days to process. Also note that a condition of the permit requires the securing all of the appropriate additional permits before initiating work. This information is provided so that you may plan accordingly.

DWR-1

If after careful evaluation, it is your assessment that your project is not within the authority of the Reclamation Board, you may disregard this notice. For further information, please contact Sam Brandon of my staff at (916) 574-0651.

Sincerely,

Mike Mirmazaheri, Chief  
Floodway Protection Section

cc: Governor's Office of Planning and Research  
State Clearinghouse  
1400 Tenth Street, Room 121  
Sacramento, CA 95814

### Encroachment Permits Fact Sheet

#### **Basis for Authority**

State law (Water Code Sections 8534, 8608, 8609, and 8710 – 8723) tasks the Reclamation Board with enforcing appropriate standards for the construction, maintenance, and protection of adopted flood control plans. Regulations implementing these directives are found in California Code of Regulations (CCR) Title 23, Division 1.

#### **Area of Reclamation Board Jurisdiction**

The adopted plan of flood control under the jurisdiction and authority of the Reclamation Board includes the Sacramento and San Joaquin Rivers and their tributaries and distributaries and the designated floodways.

Streams regulated by the Reclamation Board can be found in Title 23 Section 112. Information on designated floodways can be found on the Reclamation Board's website at [http://recbd.ca.gov/designated\\_floodway/](http://recbd.ca.gov/designated_floodway/) and CCR Title 23 Sections 101 - 107.

#### **Regulatory Process**

The Reclamation Board ensures the integrity of the flood control system through a permit process (Water Code Section 8710). A permit must be obtained prior to initiating any activity, including excavation and construction, removal or planting of landscaping within floodways, levees, and 10 feet landward of the landside levee toes. Additionally, activities located outside of the adopted plan of flood control but which may foreseeable interfere with the functioning or operation of the plan of flood control is also subject to a permit of the Reclamation Board.

Details regarding the permitting process and the regulations can be found on the Reclamation Board's website at <http://recbd.ca.gov/> under "Frequently Asked Questions" and "Regulations," respectively. The application form and the accompanying environmental questionnaire can be found on the Reclamation Board's website at <http://recbd.ca.gov/forms.cfm>.

#### **Application Review Process**

Applications when deemed complete will undergo technical and environmental review by Reclamation Board and/or Department of Water Resources staff.

#### **Technical Review**

A technical review is conducted of the application to ensure consistency with the regulatory standards designed to ensure the function and structural integrity of the adopted plan of flood control for the protection of public welfare and safety. Standards and permitted uses of designated floodways are found in CCR Title 23 Sections 107 and Article 8 (Sections 111 to 137). The permit contains 12 standard conditions and additional special conditions may be placed on the permit as the situation warrants. Special conditions, for example, may include mitigation for the hydraulic impacts of the project by reducing or eliminating the additional flood risk to third parties that may caused by the project.

Additional information may be requested in support of the technical review of

your application pursuant to CCR Title 23 Section 8(b)(4). This information may include but not limited to geotechnical exploration, soil testing, hydraulic or sediment transport studies, and other analyses may be required at any time prior to a determination on the application.

Environmental Review

A determination on an encroachment application is a discretionary action by the Reclamation Board and its staff and subject to the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code 21000 et seq.). Additional environmental considerations are placed on the issuance of the encroachment permit by Water Code Section 8608 and the corresponding implementing regulations (California Code of Regulations – CCR Title 23 Sections 10 and 16).

In most cases, the Reclamation Board will be assuming the role of a "responsible agency" within the meaning of CEQA. In these situations, the application must include a certified CEQA document by the "lead agency" [CCR Title 23 Section 8(b)(2)]. We emphasize that such a document must include within its project description and environmental assessment of the activities for which are being considered under the permit.

Encroachment applications will also undergo a review by an interagency Environmental Review Committee (ERC) pursuant to CCR Title 23 Section 10. Review of your application will be facilitated by providing as much additional environmental information as pertinent and available to the applicant at the time of submission of the encroachment application.

These additional documentations may include the following documentation:

- California Department of Fish and Game Streambed Alteration Notification (<http://www.dfg.ca.gov/1600/>),
- Clean Water Act Section 404 applications, and Rivers and Harbors Section 10 application (US Army Corp of Engineers),
- Clean Water Act Section 401 Water Quality Certification, and
- corresponding determinations by the respective regulatory agencies to the aforementioned applications, including Biological Opinions, if available at the time of submission of your application.

The submission of this information, if pertinent to your application, will expedite review and prevent overlapping requirements. This information should be made available as a supplement to your application as it becomes available. Transmittal information should reference the application number provided by the Reclamation Board.

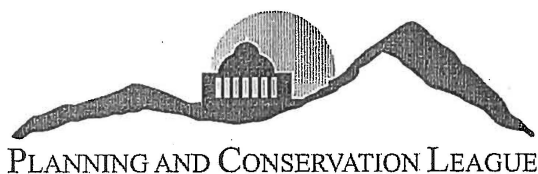
In some limited situations, such as for minor projects, there may be no other agency with approval authority over the project, other than the encroachment permit by Reclamation Board. In these limited instances, the Reclamation Board

may choose to serve as the "lead agency" within the meaning of CEQA and in most cases the projects are of such a nature that a categorical or statutory exemption will apply. The Reclamation Board cannot invest staff resources to prepare complex environmental documentation.

Additional information may be requested in support of the environmental review of your application pursuant to CCR Title 23 Section 8(b)(4). This information may include biological surveys or other environmental surveys and may be required at anytime prior to a determination on the application.



*President*  
John Van De Kamp  
*President Emeritus*  
Sage Sweetwood  
*Senior Vice President*  
Kevin Johnson  
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Bill Center



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Dorothy Green  
Phyllis Faber  
Rick Hawley  
Doug Linney  
David Mogavero  
Lynn Sadler  
Teresa Villegas

November 1, 2006

Debra Hoek  
HDR Surface Water Resources, Inc.  
2031 Howe Avenue, Suite 110  
Sacramento, CA 95825

Curt Aikens  
Yuba County Water Agency  
1402 D Street  
Marysville, CA 95901

RE: Proposed Mitigated Negative Declaration for the YCWA's Proposed Extension Petition for the Interim Instream Flow Requirements under SWRCB RD-1644 and One-Year Water Transfer for 2007 from YCWA to DWR for the Environmental Water Account Program

Dear Ms. Hoek and Mr. Aikens:

This letter is submitted as the comments of the Planning and Conservation League regarding the Proposed Mitigated Negative Declaration for the YCWA's Proposed Extension Petition for the Interim Instream Flow Requirements under SWRCB RD-1644 and One-Year Water Transfer of up to 125,000 AF for 2007 from YCWA to DWR for the Environmental Water Account Program.

The Planning and Conservation League (PCL) is aware that these comments are submitted after the official close of the comment period for the above mentioned actions and request that our comments be included in the record due to the following events:

On October 26, 2006, I contacted the Yuba County Water Authority (YCWA) to receive more information about a potential water transfer from YCWA to the California Department of Water Resources (DWR) for the Environmental Water Account (EWA). I was informed by YCWA staff member Jeanene Upton that there was no public comment period for the water transfer, that YCWA had submitted a petition to the SWRCB with a public comment period that closed on October 23<sup>rd</sup>, and that the Notice of Intent for the water transfer would not be approved by the YCWA Board of Directors until November 14<sup>th</sup>. I requested that YCWA inform me when a document was available for public comment. Jeanene agreed to pass along my request to those who were preparing the Mitigated Negative Declaration (MND). On October 31<sup>st</sup> I received a copy of the Notice of Intent to Adopt a Mitigated Negative Declaration which listed the October 26<sup>th</sup> public comment deadline. The YCWA states that the public comment period was shortened pursuant to CEQA Guidelines section 15105. The guidelines state that this truncated twenty day comment period should only be used when environmental review of a project will not be sent to the state agencies. Because this project involves the Department of Water Resources, and requires approval by the State Water Resources Control Board, the NOI should



1107 9th Street, Suite 360, Sacramento, CA 95814 Phone: 916-444-8726 Fax: 916-448-1789  
Website: [www.pcl.org](http://www.pcl.org) Email: [pclmail@pcl.org](mailto:pclmail@pcl.org)



have been submitted to state agencies and the standard thirty day public comment period should have been granted.

In light of the incorrect information that I received from YCWA staff and the inappropriately truncated public comment period, we request that YCWA accept these comments into the record for the Notice of Intent to Adopt a Mitigated Negative Declaration for the proposed extension petition and the 125,000 AF water transfer. PCL also requests that YCWA re-open the public comment period for at least ten additional days.

PCL-1

We believe that there are substantial existing environmental issues and potential project impacts that must be fully analyzed before approval of this project. We therefore recommend that YCWA not adopt a Mitigated Negative Declaration and instead commit to preparing a full Environmental Impact Report (EIR).

PCL-2

Among other issues we are concerned that the project proposes to increase water diversions from the Yuba River and the California Delta at the same time federal and state scientists are discovering that existing diversions are negatively affecting threatened and endangered fish populations.

PCL-3

We therefore request that a draft EIR undertake the following:

1.) Fully analyze impacts of the proposed project given the new information from studies conducted as part of the Interagency Ecological Program's Pelagic Organism Decline (POD) research. Specifically, the draft EIR should address the degree to which the projects will contribute to reduced freshwater flows and changes in the timing of flows to the Bay Delta Estuary, salinity changes in the Delta and negative impacts on instream and downstream fisheries. This assessment should include an analysis of the latest research from William A. Bennett of the Center for Watershed Sciences & Bodega Marine Laboratory, Pete Smith of the USGS, Lenny F. Grimaldo of the DWR, and Bruce Herbold of the US EPA, including finding presented at the October 2007 California Bay Delta Authority Science Conference.

PCL-4

The proposed one-year water transfer may include the transfer of water in March 2007 and December 2007. Because increased winter pumping from the Delta has been identified as a principal potential cause of the Pelagic Organism Decline, the analysis should examine all scientific information on the impacts of increased winter pumping during the POD years and determine how this project may amplify those impacts.

2.) Fully analyze the project's impacts given the impacts of climate change. The Department of Water Resources released "Progress on Incorporating Climate Change into Management of California's Water Resources" in July 2006. That report included information on how climate change is likely to affect Delta and upstream resources, as well as water supply. According to the DWR report, climate change will result in reduced water available to the environment, and an increase the temperature of those waters. The draft EIR should incorporate this information, as well as other studies on climate change and California.<sup>1</sup> The draft EIR must address how the project will impact fisheries and environmental resources given the already stressful conditions posed by climate change. The draft EIR should also analyze the degree to which the proposed

PCL-5

project will impact the availability of water, and specifically the availability of cold water for fisheries given the impacts of climate change.	PCL-5
3.) Fully evaluate whether project operations will inhibit the restoration of endangered species, including salmon, steelhead and Delta smelt, as well as the greater ecosystem of the Yuba River, the Feather River, the Sacramento River and the Delta.	PCL-6
4.) Fully analyze an alternative that includes increased implementation of water conservation, and water recycling as methods for reducing demands for increased water diversions. This alternative should address the information included in the California Water Plan Update 2005, released by DWR in April 2006.	PCL-7
5.) Fully analyze the impacts of the project on the fisheries of the Lower Yuba, Feather River, Sacramento River and the Delta.	PCL-8
6.) Fully analyze the impacts of the project on Sacramento Valley water users.	PCL-9
7.) Fully analyze the impacts of the utilization of this water on the operations of the upstream reservoirs such as New Bullards Bar Reservoir that are the source of the water. The draft EIR should also analyze the impacts of such re-operations.	PCL-10
8.) Fully analyze the cumulative impacts of all proposed and pursued water diversions and transfers in the Yuba River Watershed, the Feather River Watershed, the Sacramento River Watershed and the Bay Delta Watershed. Specifically, the environmental analyses must include impacts to the Bay Delta Estuary's water quality, fisheries and salinity resulting from the cumulative impacts of all upstream diversions and intended increases in Bay Delta exports (including SDIP and the Intertie projects that DWR and the Bureau of Reclamation are currently pursuing).	PCL-11
9.) Fully analyze the contribution to greenhouse gas generation that will result from the pumping of transferred water from New Bullards Bar Reservoir to the point of use. These impacts must be fully mitigated or avoided. These impacts must also be analyzed in light of the overall cumulative impacts of all greenhouse generation.	PCL-12
10.) A comprehensive EIR has never been conducted for the EWA, leaving important questions about the efficacy and impacts of the EWA unanswered. A comprehensive technical review of the EWA will be initiated in November 2006 to determine the biological effects and environmental impacts of the EWA. Preparation of the draft EIR should be delayed to incorporate the results of this analysis.	PCL-13
11.) The CALFED ROD, which includes the EWA, is under review as a result of litigation. On August 11, 2006, the Planning and Conservation League, the Natural Resources Defense Council and Environmental Defense submitted an amicus brief to the California Supreme Court in support of the plaintiffs regarding the CALFED Bay-Delta Programmatic Environmental Impact Report. This brief provides an overview of statements from public agencies describing the	PCL-14

decades of environmental damage caused by pumping operations in the Bay-Delta. It also critiques the failure of the CALFED EIR to examine a reduced export alternative.

PCL-14

The draft EIR should analyze this amicus brief. Preparation of the draft EIR should be delayed until final review of the CALFED ROD and resolution of all legal issues.

12.) The United States Fish and Wildlife Service and the National Marine Fisheries Service have both re-initiated consultation on the Biological Opinions for the OCAP. Since the EWA is included in the OCAP BO, analysis of this project should be delayed until these Biological Opinions are completed.

PCL-15

13.) The State Water Project's compliance with the California Endangered Species Act (CESA) is currently under consideration by the Alameda Superior Court. The analysis of this project should be delayed until the court decides whether the State Water Project (SWP) is in compliance with the law and, if the court finds that the SWP is not in compliance, the analysis should be delayed until compliance has been achieved.

PCL-16

Due to the information disseminated by staff at the YCWA which may have precluded the participation of other individuals in the public comment process, we also ask that YCWA extend the public comment period.

PCL-17

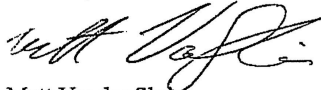
PCL remains concerned that the proposed projects will compound the ecological problems that are now apparent in the Yuba River, the Feather River, the Sacramento River, and the Bay Delta Estuary. We strongly urge the YCWA to fully analyze all potential impacts of these projects and only pursue operations that will decrease stress on California's watersheds and allow recovery of salmon, steelhead, smelt and other species.

PCL-18

PCL requests written notification of any notices filed and decisional documents, including draft EIR and environmental analyses related to these projects. PCL also requests notification of YCWA's decision as to re-opening the public comment period for this project and inclusion of these comments into the administrative record.

PCL-19

Sincerely,



Matt Vander Sluis  
Planning and Conservation League

cc: Jim Crenshaw, President  
California Sportfishing Protection Alliance

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

Lester Snow, Director  
Department of Water Resources

ATTCH: Amicus Curiae Brief of the Planning and Conservation League, Natural Resources Defense Council, and Environmental Defense re: Bay-Delta Programmatic EIR

<sup>i</sup> Many studies have been conducted that estimate the impacts of climate change on California water resources. These studies include:  
Documentation of Inputs to Macroeconomic Assessment of the 2006 Climate Action Team Report to the Governor and Legislature, Final Version. Posted: March 24, 2006.

Learning From State Action on Climate Change. Pew Center On Global Climate Change, November 2005 Update, reprinted with permission. Posted: December 8, 2005.

Scenarios of Climate Change in California: An Overview. FINAL report from California Energy Commission, Public Interest Energy Research (PIER) Program, California Climate Change Center, publication # CEC-500-2005-186-SF, posted: February 27, 2006.

An Assessment of Impacts of Future CO<sub>2</sub> and Climate on Agriculture. FINAL white paper from California Climate Change Center, publication # CEC-500-2005-187-SF, posted: March 15, 2006.

Analysis of Climate Effects on Agricultural Systems. FINAL white paper from California Climate Change Center, publication # CEC-500-2005-188-SF, posted: February 27, 2006.

Climate Change: Challenges and Solutions for California Agricultural Landscape. FINAL white paper from California Climate Change Center, publication # CEC-500-2005-189-SF, posted: February 27, 2006.

Climate Change and Wildfire In and Around California: Fire Modeling and Loss Modeling. FINAL white paper from California Climate Change Center, publication # CEC-500-2005-190-SF, posted: February 27, 2006.

The Response of Vegetation Distribution, Ecosystem Productivity, and Fire in California to Future Climate Scenarios Simulated by the MC1 Dynamic Vegetation Model. FINAL white paper from California Climate Change Center, publication # CEC-500-2005-191-SF, posted: February 27, 2006.

Fire and Sustainability: Considerations for California's Altered Future Climate. FINAL white paper from California Climate Change Center, publication # CEC-500-2005-192-SF, posted: February 27, 2006.

Climate Change Impact on Forest Resources. FINAL white paper from California Climate Change Center, publication # CEC-500-2005-193-SF, posted: March 16, 2006.

Climate Change Impacts on Water for Agriculture in California: A Case Study in the Sacramento Valley. FINAL white paper from California Climate Change Center, publication # CEC-500-2005-194-SF, posted: March 15, 2006.

Climate Warming and Water Supply Management in California. FINAL white paper from California Climate Change Center, publication # CEC-500-2005-195-SF. March 16, 2006.

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Predicting the Effect of Climate Change on Wildfire Severity and Outcomes in California: A Preliminary Analysis, FINAL white paper from California Climate Change Center, publication # CEC-500-2005-196-SF, posted: March 22, 2006.

Public Health-Related Impacts of Climate Change in California, FINAL white paper from California Climate Change Center, publication # CEC-500-2005-197-SF, posted: March 22, 2006.

Preparing for the Impacts of Climate Change in California: Opportunities and Constraints for Adaption, FINAL white paper from California Climate Change Center, publication # CEC-500-2005-198-SF, posted: March 22, 2006.

Climate Change Impacts on High Elevation Hydropower Generation in California's Sierra Nevada: A Case Study in the Upper American River, FINAL white paper from California Climate Change Center, publication # CEC-500-2005-199-SF, posted: March 22, 2006.

Predictions of Climate Change Impacts on California Water Resources Using CALSIM-II: A Technical Note, FINAL white paper from California Climate Change Center, publication # CEC-500-2005-200-SF, posted: February 27, 2006.

Climate Change and Electricity Demand in California, FINAL white paper from California Climate Change Center, publication # CEC-500-2005-201-SF, posted: February 27, 2006.

Projecting Future Sea Level, FINAL white paper from California Climate Change Center, publication # CEC-500-2005-202-SF, posted: March 15, 2006.

Climate Scenarios for California, FINAL white paper from California Climate Change Center, publication # CEC-500-2005-203-SF, posted: March 15, 2006.

Climate Change Projected Santa Ana Fire Weather Occurrence, FINAL white paper from California Climate Change Center, publication # CEC-500-2005-204-SF, posted: February 27, 2006.

### Attachment 3

#### **RESPONSES TO CALIFORNIA DEPARTMENT OF WATER RESOURCES FLOODWAY PROTECTION SECTION COMMENTS ON THE INITIAL STUDY/MITIGATED NEGATIVE DECLARATION**

**DWR-1:** The 2007 Pilot Program will not involve any activity that would require a permit under the provisions of the “Regulatory Process” section on page 1 of the “Encroachment Permits Fact Sheet” that was enclosed with DWR’s letter. The comment is noted.

#### **RESPONSES TO PLANNING AND CONSERVATION LEAGUE COMMENTS ON THE INITIAL STUDY/MITIGATED NEGATIVE DECLARATION**

**PCL-1:** As stated in the “Notice of Change in Review Period,” which was distributed on October 9, 2006 to the same parties who received the Notice of Intent, Notice of Availability and Initial Study/Mitigated Negative Declaration, the comment period for the IS/MND was changed to a 30-day review period, which ended on November 6, 2006. PCL’s comments are considered timely and will be included in the administrative record for the project. Therefore, re-opening the comment period for ten additional days is unnecessary.

**PCL-2:** Environmental changes expected to occur due to implementation of the proposed project have been evaluated in detailed, resource-specific evaluations that consider a range of potential conditions, and resultant impacts that are anticipated to occur are described in Chapter 4 of the IS/MND. Overall, the resource-specific analyses included in Chapter 4 of the IS/MND, and the flow and water temperature exceedance plots in Appendices 3 and 4 of the IS/MND, appropriately analyzed the potential impacts that may occur with implementation of the proposed project. Because the proposed project, with mitigation measures, would not have any significant environmental impacts, an EIR is not necessary.

**PCL-3:** The proposed project does not propose any diversions from the lower Yuba River, nor any increased diversions from the Delta. All water diverted from the Delta under the proposed project would be part of the EWA Program, which is an existing program.

**PCL-4:** Provision of the YCWA transfer water through the EWA Program would be within permitted and authorized operational and regulatory requirements (or constraints). Consequently, the proposed project would become part of the overall SWP or CVP water supply with attendant environmental limitations for exporting water from the Delta. The impacts on the Delta aquatic resources from SWP/CVP utilizing (within prescribed constraints) its pumping capacities and any necessary mitigation have been documented. Potential Delta impacts associated with EWA asset acquisitions were addressed through separate environmental compliance processes (i.e., NEPA, CEQA, and ESA), which included preparation of an EIS/EIR and corresponding Action Specific Implementation Plan (ASIP) for the Interim EWA Program. Based on the analyses, conclusions and mitigation measures presented in the EWA EIS/EIR and ASIP, a Record of Decision was issued by the Bureau of Reclamation and the California Department of Water Resources certified the EIR, which concluded that its implementation would result in less-than-significant impacts on fisheries and aquatic resources within the Sacramento-San Joaquin Delta Region.

Additionally, the percent contributions of Sacramento River flows to Delta inflows for each month of the proposed project (March 2007 through March 2008) time period were calculated as the scaled ratios of the averages of Sacramento River monthly mean flows (cfs) at the Freeport

Gage, to the averages of monthly Delta inflows (cfs) reported by Reclamation in the tables of Delta Outflow Computations for the years 1998 through 2006 ([www.usbr.gov/mp/cvo/pmdoc.html](http://www.usbr.gov/mp/cvo/pmdoc.html)). These percent contributions of Sacramento River flows to total Delta inflows were evaluated to determine the potential impacts from the proposed project on Delta fisheries and other Delta resources.

The conclusionary statements in this comment alleging adverse impacts on instream and downstream fisheries are not supported by scientific evaluation, documentation, or rationale. In fact, in addition to the analysis described above for Delta or “downstream” fisheries, the IS/MND includes a detailed analysis of the potential impacts of the proposed project on fisheries resources in the Yuba, Feather, and Sacramento rivers (IS/MND Section 4.3). The flow and water temperature changes expected to occur as part of the proposed project have been evaluated in detailed, species and life stage evaluations that consider a range of potential conditions and resultant impacts that are anticipated to occur. Overall, the species specific analyses for the Yuba River, Feather River, Sacramento River, and Delta included in Chapter 4 of the IS/MND, and the flow and water temperature exceedance plots in Appendix 3 and 4 of the IS/MND, evaluated the potential impacts to instream and downstream fisheries resources.

With respect to the timing of Delta pumping, page 2-38 of the EWA EIS/EIR (2003) states “...EWA water would be moved through the Delta from July through September, although Project operators could start moving EWA water in mid-June if fish were not in the area of the export pumps”. Page 4-30 of the EWA EIS/EIR (2003) also states, “Under certain conditions where the incremental effects on fish would be negligible [as determined] by the Management Agencies, EWA water could be transferred through the Delta as early as June or continue until November or December.” Thus, the time frame of July through September identified as the principal pumping window for the proposed project is within the time frame that was previously evaluated for the EWA Program. Consistent with the provisions of the EWA Program, the pumping period could extend beyond this timeframe if the EWA Management Agencies determine that fisheries impacts would be negligible and approve a slightly different transfer period for moving EWA assets south of the Delta.

Potential effects of the proposed project therefore have been evaluated in the EWA EIS/EIR and ASIP. For the one year that the proposed project would be implemented, the transfer would be within the pumping window identified and evaluated by the EWA program. Additionally, pumping rates and export pumping volumes at the CVP and SWP facilities in the Delta under the proposed project would be within the range previously identified and approved for the EWA Program. As discussed in the IS/MND on pages 4-60 through 4-62, potential impacts on Delta fisheries resources resulting from the EWA Program, and thus from the proposed project, would be less than significant.

**PCL-5:** The proposed project is a one year program. The IS therefore properly did not include any discussion of climate change, which is a phenomenon which occurs over many years or decades. A chapter on Climate Change Considerations will be included in the Yuba Accord EIR/EIS.

**PCL-6:** As stated above, the IS/MND includes a detailed analysis of the potential impacts of the proposed project on fisheries resources in the Yuba, Feather, and Sacramento rivers, and provides a summary of and reference to conclusions from the EWA EIS/EIR and ASIP regarding Delta fisheries. The evaluations presented in the IS/MND concluded that the 2007 Pilot Program would not have any unreasonable or significant impacts on spring-run Chinook salmon, fall-run Chinook salmon, steelhead, or Delta smelt (IS/MND Section 4.3).



**PCL-7:** CEQA does not require inclusion of alternatives to the proposed project in an initial study (CEQA Guidelines Section 15063(d)). YCWA is currently preparing an EIR/EIS for the Yuba Accord, which will evaluate implementation of the Yuba Accord and alternatives to the proposed project. A chapter on Surface Water Supply and Management, including a discussion of water use conservation measures, will be included in the Yuba Accord EIR/EIS.

**PCL-8:** Flow and water temperature exceedance plots were examined to assess potential impacts that implementation of the proposed project would be expected to have on six fish species or runs of management concern in the lower Yuba River: (1) spring-run Chinook salmon; (2) fall-run Chinook salmon; (3) steelhead; (4) green sturgeon; (5) American shad; and (6) striped bass. This approach included evaluations of potential flow and water temperature changes that could occur from March 1, 2007 through March 31, 2008. The IS/MND determined that the effect of the proposed project, relative to RD-1644 interim or long-term, would not result in adverse or unreasonable impacts to lower Yuba River fisheries populations.

In addition, the average difference in simulated flows for the lower Yuba River under RD-1644 interim or long-term, relative to the proposed project, compared to Feather River (at Gridley) and Sacramento River (at Freeport) flows were evaluated to determine potential impacts to Feather and Sacramento river fisheries. Also, the percent contributions of Sacramento River flows to total Delta inflows were evaluated to determine the potential impacts from the proposed project on Delta fisheries resources. Overall, the proposed project would result in less-than-significant impacts on aquatic resources in the Project Area.

**PCL-9:** An evaluation of the potential impacts associated with implementation of the proposed project on Sacramento Valley water users was conducted with respect to changes in water quality (surface water and groundwater) and water supply availability (IS/MND Sections 4.7, 4.8, and 4.11, respectively).

**PCL-10:** The IS/MND analyzed in detail the changes in New Bullards Bar Reservoir carryover storage and resultant impacts on coldwater fisheries resources (page 4-37), warmwater fisheries resources (page 4-37) recreation and angling opportunities (page 4-104), and water supply (page 4-108) associated with those changes expected to occur under the proposed project, relative to interim RD-1644. The proposed project would adhere to storage refill criteria requirements described on page 6-5 of the Final EWA EIS/EIR Mitigation Monitoring and Reporting Program (Reclamation *et al.* 2004). Similar changes in carryover storage expected to occur under the proposed project, relative to long-term RD-1644, also were evaluated in Appendix 2 to the IS/MND, which includes a discussion of carryover storage in Section 4.6. Based on the discussion and analyses presented in the IS/MND, potential carryover reservoir storage impacts are expected to be less than significant.

**PCL-11:** The cumulative effects of the 2007 Pilot Program are discussed in Section 5.1 of the IS/MND and were determined not to be unreasonable. This comment does not cite any evidence or analysis indicating that this determination was incorrect.

**PCL-12:** YCWA and the Member Units would implement a no net increase air quality mitigation plan to ensure no significant or adverse impacts would result during the 2007 Pilot Program associated with 30,000 acre-feet of groundwater substitution pumping that could be implemented during a Schedule 6 year. The pumping of water that will be transferred to the EWA was analyzed in the Short Term EWA EIS/EIR and found not to have any significant impacts.

**PCL-13:** The Short Term EWA EIS/EIR was certified by Reclamation (Record of Decision issued March 2004) and by the California Department of Water Resources and is not subject to any pending litigation. This EIS/EIR contains a comprehensive technical review of the EWA through December 2007. The 2007 Pilot Program IS/MND properly tiered off this document (IS/MND Section 3.2.1.2).

**PCL-14:** The Short Term EWA EIS/EIR and Record of Decision (ROD) were not challenged in the referenced litigation and therefore are legally valid documents. The 2007 Pilot Program IS/MND properly tiered off of the Short Term EWA EIS/EIR.

**PCL-15:** Due to numerous changed circumstances since the 2004/2005 OCAP consultation, Reclamation has requested re-initiation of Section 7 ESA consultation with both NMFS and USFWS. However, the existing BOs from NMFS and USFWS associated with OCAP operations dated October 2004 and February 2005, respectively, will remain in force during the re-consultation process. At this time, a date for the completion of these consultations is unknown. The delay requested by this comment is not required.

**PCL-16:** Potential impacts associated with EWA Program asset acquisitions were addressed through separate environmental compliance processes (i.e., NEPA, CEQA, and ESA), which included preparation of an EIS/EIR and corresponding Action Specific Implementation Plan (ASIP) for the Interim EWA Program. Based on the analyses, conclusions and mitigation measures presented in the EWA EIS/EIR and ASIP, a ROD was issued by the Reclamation, DWR certified the EIR, and CDFG issued a Natural Communities Conservation Plan Permit #2835-2004-002-CF, which authorized incidental take of listed species under CESA for take associated with EWA covered activities.

Additionally, CDFG issued a consistency determination in May 2005 entitled "*Consistency Determination for 2005-2008 State Water Project Delta Facility Increased Diversion to Recover Reduced Exports Taken to Benefit Fisheries Resource Projects*," which found that the U.S. Fish and Wildlife Service's OCAP Biological Opinion for the Central Valley Project and State Water Project and concomitant take authorization for delta smelt was sufficient to meet CDFG requirements for incidental take under Fish and Game Code Section 2080.1.

The delay requested by this comment therefore is not required.

**PCL-17:** The "Notice of Change in Review Period," which was distributed on October 9, 2006 to the same parties who received the Notice of Intent, Notice of Availability and Initial Study/Mitigated Negative Declaration, advised the recipients that the comment period for the IS/MND was changed to a 30-day review period, which ended on November 6, 2006. Therefore, other individuals were not precluded from participating in the comment process. Additionally, YCWA did not receive a request from any other parties asking to comment on the documents.

**PCL-18:** Although this comment refers to "ecological problems that are now apparent in the Yuba River, the Feather River, the Sacramento River, and the Bay Delta Estuary," it does not describe any ecological problems in the Yuba, Feather, or Sacramento rivers. Moreover, this project would involve a transfer of water to EWA, which is a project that reduces stress on the Delta and helps facilitate the recovery of salmon, steelhead, smelt and other species.

**PCL-19:** PCL will be notified of any future Proposed Yuba Accord project filings and will receive notice of availability of any forthcoming environmental compliance documentation. PCL also will receive copies of these responses to comments and related CEQA documents for the 2007 Pilot Program.

## References

- Reclamation, DWR, USFWS, NMFS, and CDFG. 2004. Environmental Water Account Final Environmental Impact Statement/Environmental Impact Report. Prepared by Camp Dresser & McKee and Surface Water Resources, Inc. State Clearinghouse No.1996032083.
- YCWA. 2004. Environmental Analysis: Proposed Temporary Transfer of Water From Yuba County Water Agency to California Department of Water Resources and Contra Costa Water District, Year 2004. Prepared by EDAW.